

Message Text

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ACTION EUR-12

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AMEMBASSY BONN

C O N F I D E N T I A L USBERLIN 1138

E.O. 11652: GDS
TAGS: PGOV, WB, EFIN, EAIR
SUBJECT: BERLIN VIABILITY: COMPATIBILITY OF U.S. AND GERMAN
TAX LAWS - CASE OF PAN AMERICAN AIRMEN

1. REPRESENTATIVES OF PAN AMERICAN FLIGHT CREWS IN BERLIN HAVE INFORMED US THAT IRS BONN ATTACHE SPENCER HAS DECIDED THAT THE 8 PERCENT "BONUS" (BERLINER ZULAGE) WHICH IS GRANTED TO GERMANS AND FOREIGNERS WHO WORK AND RESIDE IN BERLIN AND IS NOT ITSELF TAXED BY GERMANS IS UNDER U.S. LAW TAXABLE INCOME. THE BERLINER ZULAGE IS IN FACT NOT A BONUS BUT A COMPLICATED CREDIT BASED ON SALARY AMOUNT WHICH GENERALLY RESULTS IN A TAX REMISSION. WE ARE INFORMED BY U.S. TAXPAYERS IN QUESTION (WHO SOLICITED EXPERT OPINION FROM U.S. LAW FIRM) THAT THERE IS NO CLEAR PRECEDENT FOR HOLDING THAT ZULAGE IS TAXABLE UNDER U.S. LAW. IF INDEED THERE IS DOUBT ON TAXABILITY OF ZULAGE, WE BELIEVE INTERNAL REVENUE CODE SHOULD BE INTERPRETED SO THAT IT DOES NOT UNDERMINE GERMAN LAW IN SUPPORT OF BERLIN NOR U.S. OBJECTIVES WITH RESPECT TO PROMOTION OF THE VIABILITY OF THE CITY.

2. IMPACT OF THIS TAX ON PAN AMERICAN AIRMEN WILL PROBABLY CAUSE FEWER OF THEM TO RESIDE IN BERLIN AND MORE OF THEM TO APPLY FOR PERMANENT TRANSFER AFTER THEY HAVE COMPLETED
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THEIR CONTRACTUAL OBLIGATIONS OF ONE OR TWO YEARS' SERVICE HERE. OVER THE PAST 3-1/2 YEARS THE ANNUAL TURNOVER RATE OF PAN AM AIRMEN HAS BEEN LESS THAN 20 PERCENT. IN ADDITION, THE NUMBER OF MONTHLY "COMMUTERS" (THE PILOTS AND FLIGHT ENGINEERS WHO LIVE IN THE STATES AND FLY OUT TO BERLIN TO WORK HERE FOR TWO WEEKS AND THEN FLY BACK HOME FOR TWO WEEKS) HAS BEEN A RELATIVELY CONSTANT ONE-THIRD OF

THE NUMBER OF AIRMEN ASSIGNED HERE. WE WOULD NOT WANT TO SEE THE NUMBER OF TRANSIENTS INCREASE, BUT WE EXPECT AN UNFAVORABLE TAX ARRANGEMENT WOULD BRING THIS ABOUT. AS RESIDENTS, PAN AM AIRMEN CONTRIBUTE TO THE VISIBLE DEMONSTRATION OF THE U.S. COMMITMENT TO BERLIN. THEY ALSO CONTRIBUTE TO THE ECONOMY OF THE CITY.

3. THE DETAILS, AS IN ANY TAX CASE, ARE TEDIOUSLY COMPLEX, AND WE DO NOT INTEND TO GO INTO THEM HERE. WE WILL SEND EMBASSY (BELLINGER) AND DEPARTMENT (BARKLEY) COPIES OF BACKGROUND MATERIAL PROVIDED BY AIRMEN.

4. WE ARE SEEKING FURTHER DETAILS, PARTICULARLY LEGISLATIVE INTENT OF ZULAGE, AND ARE NOT YET READY TO OFFER DEPARTMENT A RECOMMENDATION. HOWEVER, OUR INITIAL REACTION IS THAT WE SHOULD CONSIDER RAISING THIS QUESTION AS A POLICY MATTER WITH TREASURY, CONSISTENT WITH ATTITUDE DISPLAYED BY SECRETARY BLUMENTHAL IN MEETING WITH BERLIN OFFICIALS DURING HIS NOVEMBER 1977 VISIT TO BERLIN WHEN HE AGREED THAT QUESTIONS POINTING TO ALLEGED NEGATIVE IMPACT OF APPLICATION OF U.S. TAX LAW WITH RESPECT TO BERLIN INVESTMENT BONUS SYSTEM SHOULD RECEIVE FURTHER STUDY BY EXPERTS ON BOTH SIDES. DAVIS

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